



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

*Provide limited government-* HB 439 bill creates the K-12 GI Bill Program which allows for the State Board of Education to adopt rules and to administer the K-12 GI Program; it also requires school districts to report all students participating in the program on a quarterly basis. Students accepting the K-12 GI Bill and choosing to attend a private school will reduce the number of public school students.

*Empower families* – The bill provides for Florida veterans, active members of any branch of the United States Armed Forces, active or retired members of the Florida National Guard, or active members of the Armed Forces Reserves with the opportunity to choose an educational option that best suits the needs of their dependent child.

*Safeguard individual liberty* – This bill creates three educational choice options for dependent children of a Florida veteran, an active member of any branch of the United States Armed Forces, an active or retired member of the Florida National Guard, or an active member of the Armed Forces Reserves.

#### B. EFFECT OF PROPOSED CHANGES:

##### **PRESENT SITUATION**

There are a number of educational choices currently provided by statute. These educational choices are part of the K-12 student and parent rights and include both public and private school choices.

Public school parental choice is available through each district school board, which is required to develop a plan that provides controlled open enrollment in the public schools as an addition to existing choice programs such as magnet schools, alternative schools, special programs, advanced placement, and dual enrollment.

The public school choice options provided in chapter 1002, F.S., include:

- Developmental research (laboratory) schools which are affiliated with the college of education of the state university of closest geographic proximity and which provide sequential instruction;
- Charter schools that are public schools operated under a charter;
- Charter technical career centers that are public schools or public technical centers operated under a charter and which develop a competitive workforce to support local business and industry and economic development; create a training and education model that is reflective of marketplace realities; offer a continuum of career educational opportunities; provide career pathways; and enhance career and technical training;
- The New World School of the Arts, a center of excellence for the performing and visual arts, which is assigned to Miami-Dade Community College and the Dade County School District, and one or more universities, and offers a program of academic and artistic studies in the visual and performing arts that is available to talented high school and college students;
- The Florida School for the Deaf and the Blind, a state-supported residential school for hearing-impaired and visually impaired students in preschool through 12<sup>th</sup> grade, which is part of the state system of public education and is funded through the Department of Education; and

- The Florida Virtual School which provides students with technology-based educational opportunities to gain the knowledge and skills necessary to succeed through the development and delivery of on-line and distance learning education.

The private school choice options provided in Part III of chapter 1002, F.S., include:

- The Opportunity Scholarship Program which allows the parent of a student in a chronically failing public school to request and receive an opportunity scholarship for the student to attend a private school in accordance with the provisions of section 1002.38, F.S.
- The McKay Scholarships for Students with Disabilities Program which permits the parent of a public school student with a disability who is dissatisfied with the student's progress to request and receive a McKay Scholarship for the student to attend a private school in accordance with the provisions of section 1002.39, F.S.

Other alternative educational options include:

- The corporate income tax credit scholarship program which provides private school choice options by allowing the parent of a student who qualifies for free or reduced-price school lunch to seek a scholarship from an eligible nonprofit scholarship-funding organization in accordance with the provisions of section 220.187, F.S.
- Home education - the parent of a student may choose to place the student in a home education program in accordance with the provisions of section 1002.41, F.S.; and
- Private tutoring - the parent of a student may choose to place the student in a private tutoring program in accordance with the provisions of section 1002.43(1), F.S.

## **EFFECT OF PROPOSED CHANGES**

This bill creates section 1002.395, F.S., and establishes the K-12 GI Bill Program. This program creates three educational options for the dependents of a Florida veteran as defined in section 1.01, Florida Statutes, an active duty member of any branch of the United States Armed Forces, an active or retired member of the Florida National Guard, or an active member of the Armed Forces Reserves: (1) to attend, a public school in the school district other than the one to which they are assigned, (2) to receive a K-12 GI Bill to attend a public school in an adjacent school district, or (3) to receive a K-12 GI Bill to attend an eligible private school of their choice.

This bill creates two types of K-12 GI Bills: (1) a K-12 GI Bill for the amount of \$3,600 or for the amount of tuition and fees, whichever is less, of a student enrolled in an eligible private school, and (2) a K-12 GI Bill for \$500 or for the amount of transportation expenses, whichever is less, for parents of students who choose to enroll their child in a Florida public school that is located outside the school district in which the student resides. The bill establishes student eligibility and private school criteria for participation in the program; sets forth requirements for the school district, Department of Education, and family obligations related to this program; and provides for the funding and payment of a K-12 GI Bill.

### **K-12 GI Bill Eligibility**

- The parent has notified the school district<sup>1</sup> that the student is a dependent of a Florida veteran as defined in section 1.01, F.S., an active duty member of any branch of the United States Armed Forces, active or retired member of the Florida National Guard, or an active member of the Armed Forces Reserves.

<sup>1</sup> Through the Department of Education or directly to the District by dated written or electronic communication.

- Has obtained acceptance for admission of the student to an eligible private school.
- Has notified the school district of the request for a K-12 GI Bill at least 60 days prior to the date of the first K-12 GI Bill payment.

The bill does not extend eligibility in the program to a student who is enrolled in a school operating for the purpose of providing educational services to youth in the Department of Juvenile Justice commitment programs. The bill does provide that the K-12 GI Bill remain in force until the student returns to a public school or graduates from high school. However, at any time, a parent may remove the student from the private school and place the student in another private school that is eligible to provide educational opportunities for students whose families opt to use a K-12 GI Bill.

### **School District Obligations**

- Timely notify the parent of each student, who the school district has knowledge is a dependent of a Florida veteran as defined in section 1.01, F.S., an active duty member of any branch of the United States Armed Forces, active or retired member of the Florida National Guard, or an active member of the Armed Forces Reserves, of all options available as part of the K-12 GI Bill Program.
- Offer the student's parent an opportunity to enroll the student in another public school within the district.
- Permit the student to attend the public school chosen by the parent until the student graduates. The option under this paragraph is on a space-available basis. A student who is the dependent of a parent on active duty is given first priority, provided that this option is not available if it results in a violation of the constitutional class size requirements.
- Provide transportation if a parent chooses a school consistent with the district's choice plan as provided in section 1002.31, F.S.
- Accept students from an adjacent district if space is available and report them for purposes of district funding, if parents elect this option. This option is not available if it results in a violation of the constitutional class-size requirements.
- Provide locations and times for administration of statewide assessments if a parent requests student participation in statewide assessments.
- Notify the Department of Education within 10 days after receiving notification of a parent's intent to apply for a K-12 GI Bill.
- Report all students attending private schools on a K-12 GI Bill. The students attending private schools on K-12 GI Bills will be reported separately from other students reported for purposes of the Florida Education Finance Program.

### **Private School Eligibility Requirements**

- Must be a Florida private school; may be sectarian or nonsectarian.
- Demonstrate fiscal soundness by being in operation for two years or filing a surety bond or letter of credit for an amount equal to the K-12 GI Bill funds for each quarter.
- Notify Department of Education of intent to participate in the program and the grade levels and services that can be provided.
- Comply with federal antidiscrimination provisions.
- Meet state and local health and safety laws and codes.
- Be academically accountable to the parent.
- Employ or contract with teachers who hold a baccalaureate or higher degree, have at least three years of teaching experience, or have special skills, knowledge, or expertise in the subjects taught.
- Comply with all state laws relating to private schools.
- Adhere to the tenets of its published disciplinary procedures before expelling a K-12 GI Bill student.

## Obligations of families using K-12 GI Bill Program

- Apply for the admission of his or her child.
- Notify and request the K-12 GI Bill from the school district at least 60 days prior to the date of the first K-12 GI Bill payment.
- Ensure the student must remain in attendance throughout the school year, unless excused for illness or other good cause, and must comply with the school's code of conduct.
- Comply with the private school's parental involvement requirements.
- Transport the student to the assessment site designated by the school district, if the parent requests statewide assessments.
- Restrictively endorse the warrant to the private school upon receipt of the K-12 GI Bill warrant.
- Failure to comply with any of the above requirements results in the forfeiture of the K-12 GI Bill.

## K-12 GI Bill Program Funding and Payment

- The amount of a K-12 GI Bill provided to any child enrolled in an eligible private school for any single school year is not to exceed \$3,600 annually, or the amount of tuition and fees, whichever is less.
- The K-12 GI Bill provided to a student enrolled in a Florida public school that is located outside the school district in which the student resides is not to exceed \$500, or the amount of transportation expenses, whichever is less.
- The Department of Education may make a partial tuition payment, up to \$1000 and prior to the first quarterly payment of tuition, to a private school prior to the start of the academic year to reserve a space for the students admitted to the school. There is a limit of one reservation payment per student per year. If the student opts not to attend, the private school must return this money to the Department of Education.
- Following notification on July 1, September 1, December 1, or February 1, of the number of students attending private schools on K-12 GI Bills, the Department of Education will transfer from General Revenue funds, the total amount of the K-12 GI Bills from the school district's total funding entitlement under the Florida Education Finance Program to a separate account for the K-12 GI Bill for quarterly disbursement to the parents of K-12 GI Bill students.
- When a student enters a private school on a K-12 GI Bill, the Department of Education must receive all documentation required for student participation in the K-12 GI Bill Program, including the private school's and student's fee schedules, at least 30 days prior to the first quarterly payment is made for the student. The Department of Education may not make any retroactive payments.
- The Chief Financial Officer will issue warrants to parents no later than September 1, November 1, February 1, and April 15 of each academic year in which the K-12 GI Bill is in force. A parent must give a school district notice of intent to participate in the K-12 GI Bill program 60 days before the first payment is made. There are no retroactive payments. The warrant must be made payable to the student's parent, and the parent must restrictively endorse the warrant to the private school for deposit into the school's account.

This bill allows for the State Board of Education to adopt rules pursuant to sections 120.536(1) and 120.54, F.S., to administer the K-12 GI Program. This bill amends the K-12 student and parent rights provision in section 1002.20, F.S., to include the K-12 GI Bill Program as an option under public and private school choices.

### C. SECTION DIRECTORY:

Section 1. Creates section 1002.395, F.S., the K-12 GI Bill Program.

Subsection 1 provides the purpose of the K-12 GI Bill Program.

Subsection 2 describes the K-12 GI Bill Program.

Subsection 3 sets forth K-12 GI Bill eligibility.  
Subsection 4 outlines school district obligations.  
Subsection 5 addresses private school eligibility.  
Subsection 6 provides the obligations of families opting to use a K-12 GI Bill.  
Subsection 7 sets forth K-12 GI Bill funding and payment.  
Subsection 8 limits liability on the part of the state.  
Subsection 9 allows Department of Education to adopt rules.

Section 2. Amends paragraphs (a) and (b) of subsection (6) of section 1002.20, Florida Statutes, to add the K-12 GI Bill Program to the list of public school choice options for student and parent rights to educational choice.

Section 3. Provides an effective date of upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

This bill does not appear to have a fiscal impact on state revenues.

#### 2. Expenditures:

The bill does not require an appropriation; however, it does require transfer of Florida Education Finance Program and categorical program funds by the Department of Education from public school districts to a separate account for quarterly disbursement to the parents of students taking the scholarship to a private school.

Currently, the Department of Education does not collect data that would identify eligible students who are dependents of veterans or active military personnel.<sup>2</sup> It appears that the bill may require the Department of Education to verify students who are dependents of veterans or active military personnel for program participation. If so, there may be additional costs associated with data research and updates to the current website to allow for such verification.

Reference "D. FISCAL COMMENTS:" for additional information.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

#### 2. Expenditures:

Reference "D. FISCAL COMMENTS:" for additional information.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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<sup>2</sup> Florida Department of Education. *Analysis for HB 549 on K-12 GI Bill Program for the 2005 Legislative Session* (on file with the Committee on Choice and Innovation).

According to the analysis provided by Department of Education<sup>3</sup>, private schools may receive additional resources from students able to participate in this program. Private schools may also incur further expenses related to hiring faculty, adding programs, etc. to accommodate the new students.

#### D. FISCAL COMMENTS:

According to the United States Department of Defense, in 2004 there were 134,743 school age family members of military personnel in Florida in the following categories: Active Duty, Active Guard, Active Reserve, Guard, Individual Ready Reserve, Inactive National Guard, Reserve Retired, Retired, Selected Reserve, Standby Reserve, and Survivors.<sup>4</sup> The above amount of 134,743 did not include dependents of Florida veterans who are not retired. The Department of Military Affairs and the Department Veteran's Affairs do not collect data on dependents. The DOE does not collect data on the number of veterans or their dependents in Florida.

Based on the level of participation in other choice programs, the Department of Education estimates that parents of approximately one-third (33%) of eligible non-disabled children would take advantage of the K-12 GI Bill program. This percentage would likely increase after the initial year of implementation as information about the program is made more widely available.<sup>5</sup>

The average funds per FTE from the Final Conference Report for 2004-05 are \$5,764.40. Based on the K-12 GI Bill amount of \$3,600 per student, a savings of \$2,164.40 will be realized for every student who participates in the K-12 GI Bill option.<sup>6</sup>

The bill provides up to \$500 for transporting a student to a school in an adjacent school district. In 2003-04, of the 11,685 students in the Corporate Tax Scholarship Program, .08 of one percent, or 9 students participated in the transportation scholarship. Applying the .08 of one percent to the 134,743 school-age family members of military personnel results in a projected 108 students participating in the transportation option, with a resulting fiscal impact of \$54,000.

However, due to uncertainty in the number of students who would be initially enrolled in the program, the fiscal impact is indeterminate.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

This bill does not reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

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<sup>3</sup> Florida Department of Education. *Analysis for HB 549 on K-12 GI Bill Program from the 2004 Legislative Session* (on file with the Committee on Education Appropriations).

<sup>4</sup> *Analysis for HB 549 w/CS on K-12 GI Bill Program from the 2004 Legislative Session* (on file with the Committee on Education Appropriations).

<sup>5</sup> Florida Department of Education. *Analysis for HB 549 on K-12 GI Bill Program from the 2004 Legislative Session* (on file with the Committee on Education Appropriations).

<sup>6</sup> Florida Department of Education. *Analysis for HB 549 on K-12 GI Bill Program for the 2005 Legislative Session*.

Section 3, Art. I of the State Constitution specifies that “[n]o revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.” The bill allows for sectarian, nonsectarian, parochial, religious, and denominational private schools to be eligible to participate in the state school choice scholarship programs.

In *Bush v. Holmes*,<sup>7</sup> an *en banc* panel of the First District Court of Appeal held that the Florida Opportunity Scholarship Program violated the no-aid provision of the State Constitution because the program uses state revenues to support sectarian schools. In its November 12, 2004, opinion, the district court certified this question to the Florida Supreme Court as a question of great public importance.

Also at issue in *Holmes* was whether the “no-aid” provision of the State Constitution violates the Free Exercise Clause<sup>8</sup> of the First Amendment to the federal constitution. The district court of appeal concluded that the no-aid provision does not offend the Free Exercise Clause. The matter is pending before the Florida Supreme Court and could ultimately be reviewed by the United States Supreme Court to interpret the Free Exercise Clause’s impact on Florida’s no-aid provision.

#### B. RULE-MAKING AUTHORITY:

This bill directs the State Board of Education to adopt rules pursuant to sections 120.536(1) and 120.54, F.S., to administer this bill.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

While the requirements for parents, students, districts, the Department of Education, and private schools are similar to other scholarship programs, the following recommendation by the Department of Education would provide for additional consistency:

- Page 8, lines 201-202, strike “or the amount of transportation expenses, whichever is less,” it is difficult to determine parents’ expenditures for transportation. Other similar scholarship programs do not include a “lessor of” clause with regard to transportation.

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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<sup>7</sup> Case Nos. 1D02-3160, 1D02-3163 and 1D02-3199 (Fla. 1st DCA Nov. 12, 2004).

<sup>8</sup> “Congress shall make no law respecting an establishment of religion, ***or prohibiting the free exercise thereof.***” (Emphasis added.)